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# **In the Supreme Court of the United States**

**OCTOBER TERM, 1961**

**FEDERAL LAND BANK OF WICHITA, PETITIONER**

**v.**

**BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF  
KIOWA, STATE OF KANSAS, ET AL.**

**ON WRIT OF HABEAS CORPUS TO THE SUPREME COURT OF THE  
STATE OF KANSAS**

## **BRIEF FOR THE PETITIONER**

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**v.**

**BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF  
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**ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE  
STATE OF KANSAS**

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**BRIEF FOR THE PETITIONER**

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## **OPINIONS BELOW**

The opinion of the Supreme Court of Kansas (R. 38-51) is reported at 187 Kan. 148. The findings of fact and conclusions of law of the District Court of Kiowa County, Kansas (R. 24-28), are not officially reported.

## **JURISDICTION**

The judgment of the Supreme Court of Kansas was entered on August 4, 1960 (R. 39). On August 9, 1960, the Supreme Court of Kansas granted petitioner's motion for an extension of twenty days from August 15, 1960, to file a motion for rehearing (R. 52-53). A motion for rehearing was filed on August 31, 1961, and denied on October 5, 1960 (R. 53). The

petition for a writ of certiorari was filed on December 29, 1960, and granted on March 20, 1961 (R. 54). The jurisdiction of this Court is invoked under 28 U.S.C. 1257(3).

**QUESTION PRESENTED**

Whether, in view of the provision in the Federal Farm Loan Act exempting Federal Land Banks from "Federal, State, municipal, and local taxation, except taxes upon real estate," a political subdivision of a State can constitutionally subject the royalty interest of a Federal Land Bank in an oil and gas lease to a personal property tax.

**CONSTITUTIONAL PROVISION, STATUTES AND REGULATIONS INVOLVED**

The Supremacy Clause of the United States Constitution, Art. VI, para. 2, provides in pertinent part as follows:

This Constitution, and the laws of the United States which shall be made in Pursuance thereof \* \* \* shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The relevant provisions of the Federal Farm Loan Act of 1916 (39 Stat. 360), as amended, 12 U.S.C. 781, Fourth, 931-933; of the General Statutes of Kansas (1949), Sections 79-329 through 79-334; and of the Regulations issued by the Farm Credit Administration (6 C.F.R. 10.64) are printed in the Appendix, *infra*, pp. 27-30.

## **STATEMENT**

The facts, as found by both courts below (R. 34-37, 39-42), are not in dispute and may be summarized as follows:

Petitioner, the Federal Land Bank of Wichita, is a federal instrumentality organized under an Act of Congress, the Federal Farm Loan Act of 1916 (R. 39-40). In 1922, in the course of its regular farm mortgage business, it made a loan of \$3000 and as security therefor took a mortgage on the quarter section of land in Kiowa County, Kansas, involved in this case. The loan being in default in 1941, petitioner commenced a foreclosure action and was awarded judgment in the amount of \$3306.79, with interest. Later that year, petitioner bid in the land at sheriff's sale for \$3234.37 (the amount of the judgment, interest and costs, less a credit of \$150 for cancellation of the stock issued in connection with the loan) and in May 1943 received a sheriff's deed to the premises (R. 40, 42-43).

In September 1942, Richard P. Janson, the present owner, contracted to buy the land for \$3500, and in August 1946, petitioner conveyed the property to Janson and his wife by a warranty deed reciting the consideration of \$3500. By the deed, petitioner reserved an undivided one-half interest in the mineral estate for a period of twenty years from and after May 1943 and for so long thereafter as minerals are produced on the premises or are being developed or operated (R. 40). Previously, in 1941, the Board of Directors of petitioner, finding it "to the best interests of the Bank to reserve an interest in minerals or

mineral rights in connection with sales of its acquired ~~land~~ estate in order to realize as much as possible from such sales," had authorized such reservations of mineral rights (R. 43-44).

In 1943, when petitioner conveyed the land in question to Janson and reserved the one-half interest in the mineral estate, it had already recouped its loss suffered by reason of the default on the mortgage loan relating to that land. At that time, there was no mineral production or any immediate prospect of such production on the premises or on lands in the vicinity (R. 40). However, in 1955 a pool of gas was discovered in the area, and the Janson land is now unitized for oil and gas production with an adjoining quarter section in which there is located a gas well—the source of the oil and gas from which petitioner's royalty interest is derived (R. 41).

In 1944, petitioner had granted a ten-year oil and gas lease to the property to V. C. Reuse. In June 1955, petitioner granted the Gulf Oil Corporation a second oil and gas lease to the property. As of the time of the trial of the present case (the spring of 1959), petitioner had derived \$960 in rents and bonuses from the two leases and \$2017.20 in royalties under the second lease. From 1947 through 1959, petitioner paid a total of \$33.15 in real property taxes upon its interest in the mineral estate (R. 41, 44).

In 1957, Kiowa County levied and assessed for the year 1957 a personal property tax against petitioner's royalty interest under the oil and gas lease. This tax was levied pursuant to provisions of the General Stat-

utes of Kansas declaring such mineral interests to be personal property and authorizing their taxation. Petitioner brought this action in the District Court of Kiowa County to enjoin the levy and collection of the tax on the ground that Section 26 of the Federal Farm Loan Act exempts it from the payment of all taxes except real estate taxes (R. 41). The trial court denied the injunction (R. 28), and the Supreme Court of Kansas affirmed (R. 51). In upholding the tax, the latter court held that petitioner's reservation and retention of the mineral interest in question was not pursuant to any of its governmental functions, that the "implied immunity" of federal instrumentalities from state taxation applied only with respect to the governmental functions of such instrumentalities and that, in any event, Congress did not intend its tax immunity to apply where a Federal Land Bank was not acting in furtherance of its governmental functions (R. 48-51).

#### SUMMARY OF ARGUMENT

A political subdivision of the State of Kansas has imposed a personal property tax on the royalty interest in a lease of certain mineral rights that petitioner, a Federal Land Bank, reserved when it sold some property it had obtained upon foreclosure on a defaulted mortgage loan. The imposition of that tax is in plain conflict with the exemption from State and local taxation that Congress granted Federal Land Banks by Section 26 of the Federal Farm Loan Act, and hence is unconstitutional by virtue of the Supremacy Clause of the Federal Constitution. The Court, notably in *Federal*

*Land Bank v. Bismarck Lumber Co.*, 314 U.S. 95, has already held that Section 26 is entitled to a liberal construction and that it is applicable to taxes comparable to the one at issue. The Court also held, in the same case, that it was within the constitutional power of Congress to grant the tax immunity in question.

The Supreme Court of Kansas sought to escape the force of Section 26 by holding that, under the doctrine of "implied immunity," petitioner's royalty interest was not immune from State taxation because retention of the mineral rights was not necessary to recoup losses on the mortgage loan in question and hence was not in furtherance of a "governmental" function. This approach ignores the fact that, since petitioner is protected by an express statutory immunity, no doctrine of "implied immunity" is applicable here. Moreover, this Court has already ruled that the distinction between "governmental" and "proprietary" activities does not apply to the federal government, since all exercises of its delegated powers are "governmental."

It is clear from both the nature of the Federal Land Bank system and the expressions of congressional purpose in establishing that system that the royalty interest in question is within the scope of the tax exemption declared in Section 26. The central purpose of that system was to make mortgage loans available to farmers at the lowest possible interest rates. To that end, the system was designed in such a way

that any profits earned would be returned to the farmer-borrowers, thus reducing their effective interest rates; the tax exemption was regarded by Congress as necessary to keep those profits from being dissipated. Thus, even if petitioner's retention of the mineral interest in question served no other purpose than to make a profit (a profit that would necessarily be passed on to farmer-borrowers under the cooperative features of the system), it was advancing the central purpose of the Federal Land Banks and was entitled to tax exemption.

The Supreme Court of Kansas also raised some question as to the authority of petitioner to retain the mineral interest in question. Petitioner's authority to do so under the Federal Farm Loan Act and implementing regulations issued by the Farm Credit Administration is clear. Even if there is any question on that point, however, the matter is one for the Farm Credit Administration, the agency charged by Congress with the responsibility for supervision over the Federal Land Bank system; it cannot be raised collaterally by state taxing authorities. This is emphasized by the fact that Congress has knowingly declined to interfere with the Farm Credit Administration's supervision of the mineral-interest activities of Federal Land Banks. In any event, lack of authority on the part of petitioner to retain the mineral interest in question would not make the royalty subject to tax, for the statutory immunity is plainly broad enough to cover any personal property in fact owned by a Federal Land Bank.

## ARGUMENT

### A. CONGRESS HAS EXEMPTED PETITIONER FROM STATE TAXATION OF ITS PERSONAL PROPERTY

It seems scarcely open to question that the tax at issue in this case cannot constitutionally be imposed on petitioner by the State of Kansas or one of its political subdivisions. The character of the tax is not disputed. It was levied by the County of Kiowa as a personal property tax (R. 6, 8) on petitioner's royalty interest in an oil and gas lease, an interest that "for the purpose of valuation and taxation" had been declared by Kansas law "to be personal property," Section 79-329, General Statutes of Kansas (1949) (Appendix, *infra*, pp. 28-29). Indeed, the Supreme Court of Kansas expressly recognized that "[w]e are concerned here with a tax only on personal property" (R. 48).

Clearly and unequivocally, Congress has exempted petitioner, as a Federal Land Bank, from all such taxes. It has provided, in Section 26 of the Federal Farm Loan Act of 1916, 39 Stat. 380, 12 U.S.C. 931 (Appendix, *infra*, p. 27).

That every Federal land bank \* \* \* including the capital and reserve or surplus therein and the income derived therefrom, shall be exempt from Federal, State, municipal, and local taxation, except taxes upon real estate \* \* \*.<sup>1</sup>

<sup>1</sup> The minerals in the earth are, under Kansas decisions, regarded as real property, and when owned separately from the surface rights they are separately assessed and taxed as real property. *Mining Co. v. Crawford County*, 71 Kan. 276. Such taxes have been paid by petitioner (see p. 4, *supra*) and are not in dispute.

By the comprehensiveness of the language it used, as well as by the limited character of the exception it provided, Congress made it unmistakably plain that a Federal Land Bank like petitioner is not subject to state personal property taxes. Under the Supremacy Clause, U.S. Constitution, Art. VI, para. 2, the congressional exemption must prevail, and the conflicting effort by the State to impose this tax must fall.

To the limited extent that the language of Section 26 might require construction, this Court has already construed it. In *Federal Land Bank v. Bismarck Lumber Co.*, 314 U.S. 95, the Court held that a state sales tax could not be applied to lumber and other building materials purchased by a Federal Land Bank to effect necessary repairs and improvements to buildings on properties acquired through foreclosure. In finding that the statutory exemption defeated that tax, the Court emphasized the unqualified character of the language of Section 26, noting that the "including" clause "connotes simply an illustrative application of the general principle" (314 U.S. at 99-100). Particularly significant is the Court's observation that "a broad construction [of Section 26] is indicated by Congress's intention to advance credit to farm borrowers at the lowest possible interest rate" (*id.* at 100). See, also, *Federal Land Bank v. Crossland*, 261 U.S. 374, where the Court held that Section 26 exempted mortgages executed to a Federal Land Bank from a state recording tax. The personal property tax in the present case applies just as directly and has just as significant an impact on the opera-

tions of a Federal Land Bank as the sales and recording taxes involved in the *Bismarck* and *Crosland* cases. These decisions have dispelled any possible doubt as to the applicability of Section 26 to taxes such as the one at issue.

In upholding the tax in the present case, the Supreme Court of Kansas did not raise any question as to the power of Congress to immunize the petitioner from state taxation. And rightly so, for the existence of that power is no longer open to serious question. This Court spoke unequivocally on the point in the *Bismarck* case, *supra* (314 U.S. at 102-103):

Congress has the power to protect the instrumentalities which it has constitutionally created. This conclusion follows naturally from the express grant of power to Congress "to make all laws which shall be necessary and proper for carrying into execution all powers vested by the Constitution in the Government of the United States, Const. Art. I, § 8, par. 18." *Pittman v. Home Owners' Loan Corp.*, 308 U.S. 21, 33, and cases cited. We have held on three occasions that Congress has authority to prescribe tax immunity for activities connected with, or in furtherance of, the lending functions of federal credit agencies. *Smith v. Kansas City Title & Trust Co.*, *supra*; *Federal Land Bank v. Crosland*, 261 U.S. 374; *Pittman v. Home Owners' Loan Corp.*, *supra*. The first two of these cases dealt with the very § 26 now in issue. They are conclusive here.

There are countless other decisions in which this Court has sustained the power of Congress to determine the extent to which federal instrumentalities shall be exempt from state taxation. See, *e.g.*, *Carson v. Roane-Anderson Co.*, 342 U.S. 232, 233-234; *Cleveland v. United States*, 323 U.S. 329, 333; *Maricopa County v. Valley Bank*, 318 U.S. 357; *Federal Land Bank v. Priddy*, 295 U.S. 229, 235. There is no escaping the impact of these rulings. The exemption declared by Section 26 of the Federal Farm Loan Act "must prevail over any inconsistent laws of a State." *Federal Land Bank v. Crosland*, *supra*, 261 U.S. at 377. Since the applicability of its plain language to the Kansas personal property tax is clear, there is no occasion for further inquiry, and the judgment below should be reversed forthwith.

**B. THERE IS NO BASIS FOR ENGRAFTING ANY "IMPLIED" QUALIFICATION ONTO THE EXPRESS STATUTORY EXEMPTION**

Apparently recognizing the impossibility of finding the Kansas tax beyond the express terms of Section 26 of the Federal Farm Loan Act, the Supreme Court of Kansas sought to escape its force by engrafting upon it an implicit qualification. The court indulged in the assumption that, in reserving the oil and gas interest sought to be taxed, the petitioner was not acting in a "governmental" capacity; this, because "the bank had been made whole and had fully recouped any loss it may have sustained resulting from the foreclosure" so that, "[f]or all the record shows, the mineral interest was retained merely as a 'specu-

lative investment' after the governmental function with respect to the original mortgage investment had been accomplished" (R. 48, 49). On the basis of this assumption, the court found that the doctrine of "implied immunity" of federal instrumentalities from State taxation applies only to the "governmental," and not to the "proprietary," functions of the instrumentality. Alternatively, it concluded that Congress intended that such a distinction qualify its grant of immunity. There is no foundation for either of these conclusions or for the assumption underlying them.

*1. No Doctrine of Implied Immunity Is Applicable Here, Nor, If It Were, Would It Be Subject to a "Governmental-Proprietary" Distinction*

In its primary approach to the question presented by this case (R. 48-50), the court below treated the question as involving the "implied immunity" of a federal agency from taxation by a State. Thus, its analysis consisted principally of discussing and quoting its own earlier opinion in *Clinton v. State Tax Commission*, 146 Kan. 407, which had held the salary of an employee of the Federal Land Bank subject to state income tax. But in that case, the court had carefully noted that the tax was "in no sense a direct tax on the corporation or its assets" and that hence there was no statutory exemption involved (146 Kan. at 422); it reached the matter of "implied immunity" only because "[w]here the answer to the question of immunity is not made plain by the words of the statute, it becomes necessary to ascertain whether immunity is granted by implication" (146 Kan. at

421). In the present case, there is no room for such an inquiry; here, "the answer to the question of immunity" is "made plain by the words of the statute"—the clearest, most unequivocal words Congress could have used. In any event, this Court has provided the conclusive answer to any attempt to engraft, by implication, a "governmental-proprietary" qualification upon the immunity of a federal instrumentality from state taxation. In *Federal Land Bank v. Bismarck Lumber Co.*, *supra*, 314 U.S. at 102, the Court held that the distinction between governmental and proprietary functions is not applicable to the federal government:

The argument that the lending functions of the federal land banks are proprietary rather than governmental misconceives the nature of the federal government with respect to every function which it performs. The federal government is one of delegated powers, and from that it necessarily follows that any constitutional exercise of its delegated powers is governmental. *Graves v. New York ex rel. O'Keefe*, 306 U.S. 466, 477. It also follows that, when Congress constitutionally creates a corporation through which the federal government lawfully acts, the activities of such corporation are governmental. *Pittman v. Home Owners' Loan Corp.*, 308 U.S. 21, 32; *Graves v. New York ex rel. O'Keefe*, *supra*, 477.

See, also, *Mayo v. United States*, 319 U.S. 441, 444. Since the constitutional power of Congress to create

the Federal Land Banks, and of the federal government to act through them, is indisputable (see pp. 10-11, *supra*), it is equally clear that the activities of the banks must necessarily be deemed governmental and hence, under the Kansas Supreme Court's own theory, immune from state taxation.

*2. Congress Plainly Intended Such Activities of Federal Land Banks as Are Involved Here To Be Immune from Taxation*

The alternative conclusion of the Supreme Court of Kansas, "that the Congress, in enacting the exemption provision in [Section 26], intended that the tax immunity there provided should apply only when the bank is engaged in the furtherance of its governmental function" (R. 51), fares no better. The court cites no support for this statement; neither the words of the statute nor its legislative history lends any basis for inferring such an intention on the part of Congress. On the contrary it is clear that activities of the Federal Land Banks such as those involved here (whether they be for the purpose of recouping losses on default or of making a profit) were recognized by Congress to be vital to the accomplishment of the banks' purpose and were intended by Congress to be within the scope of its tax exemption. This is evident not only from the nature of the Federal Land Bank system, but also from specific expressions of congressional purpose.

The Federal Land Bank system has been in active operation since 1917.<sup>2</sup> There are twelve such banks, each of them responsible for serving a farm credit district; District No. 9, served by petitioner, embraces the states of Colorado, Kansas, New Mexico and Oklahoma. The banks are specialized rural credit institutions supervised, along with other similar institutions, by the Farm Credit Administration. The Federal Land Banks do not carry on a general banking business, nor do they accept general deposits.<sup>3</sup> Their principal activity is the making of long-term loans to farmers for agricultural purposes, secured by first mortgages on farm lands. The funds for the loans are obtained by the sale of consolidated bonds. There is no government capital in the Land Banks,<sup>4</sup> nor are there any individual stockholders.

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<sup>2</sup> Useful descriptions of the system's functioning (from which much of the following material was taken) are to be found in the following pamphlets prepared and distributed by the Farm Credit Administration: *The Federal Land Bank System—How It Operates* (FCA Circ. 33, Rev. 1961); *1917–1957: Years of Progress with the Cooperative Land Bank System* (FCA Circ. E-43, 1957); *The Cooperative Farm Credit System—Functions and Organization* (FCA Circ. 36A, Rev. 1959). The functions of the Federal Land Banks have been previously considered by this Court in *Smith v. Kansas City Title Co.*, 255 U.S. 180, 202–206; *Federal Land Bank v. Crosland*, 261 U.S. 374; *Federal Land Bank v. Gaines*, 290 U.S. 247, 252–253; *Knox Loan Assn. v. Phillips*, 300 U.S. 194; and *Federal Land Bank v. Bismarck Lumber Co.*, 314 U.S. 95, 102.

<sup>3</sup> They are authorized by Section 6 of the Federal Farm Loan Act to serve as depositories of public money, but they have not been used for this purpose since 1923, except briefly in 1934.

<sup>4</sup> The government provided most of the capital with which the system was started and furnished additional capital in later years; however, these amounts had been fully repaid by 1947.

all of the stock of the Land Banks being owned by federal land bank associations (formerly called national farm loan associations). The stock in the associations in turn is owned by the farmer-borrowers.

The individual prospective borrower makes his initial approach to the federal land bank association, a local organization of ten or more members with its own bylaws and officers. The members are borrowers and remain members only so long as they continue to be borrowers. Each borrower must subscribe for stock in the local association in the amount of five percent of the loan; when the loan is paid off the stock is retired. In turn, the local association, in obtaining funds for the loan from the Federal Land Bank, subscribes for stock in the Land Bank in the amount of five percent of the loan. The stock of each thus reflects the loans outstanding. Any profits of the Federal Land Banks, above expenses and reserves, are paid in dividends to its stockholders, the federal land bank associations. The associations in turn pay their profits, in the form of dividends, to their member-stockholders. Since these are all borrowers, the profit of the Federal Land Bank system results in a reduction of the effective rate of interest on the loans.

The application of system profits to reduce effective interest rates goes to the very heart of the objectives Congress sought to achieve in enacting the Federal Farm Loan Act of 1916. Eight years of intensive study of rural credit problems by both the

executive and legislative branches had disclosed that existing credit institutions were unable to provide farmers with loans on a sufficiently long-term basis and at sufficiently low interest rates. The relevant committee report (H. Rep. No. 630, 64th Cong., 1st Sess. 4) stated:

It has become manifest that a new form of credit organization must be established which shall be specially and peculiarly adapted to the farmers' requirements. \* \* \* For example, it must be enabled and prepared to grant long-time amortizable loans upon farm-land mortgages at low interest rates \* \* \*.

The Joint Committee on Rural Credits listed "[l]ow interest rates, long-term mortgages, and amortization payments for the farmer" as among the "primary considerations in devising such a system" for rural credit. H. Doc. No. 494, 64th Cong., 1st Sess. 8; see, also, *id.* at 11-12; S. Rep. No. 144, 64th Cong., 1st Sess. 2, 4, 7-9. There was repeated emphasis throughout the debates as to the necessity of securing for the farmer low interest rates—rates lower, indeed, than could be gotten elsewhere. Senator Hollis, manager of the bill in the Senate, said (53 Cong. Rec. 7024):

If we can help him [the farmer] and give him cheap money, we shall accomplish the purpose of the bill. If we can not do it cheaper than existing banks do it, we can not help him.

See, also, *e.g.*, 53 Cong. Rec. 6696, 6698, 7021, 7023.

The rural credit system devised by Congress was to achieve these lower interest rates in two ways:

First, the bill provided (in what became Section 12 of the Act, 12 U.S.C. 771, Second) that the Land Banks could charge borrowers only one percent more for interest than they paid their bondholders. Second, ~~any~~ profits earned by the system were to be returned to the borrowers. As this aspect of the bill was explained in S. Rep. No. 144, 64th Cong., 1st Sess. 5:

The profits go to the local associations in the form of dividends on stock of the land bank held by the associations and reach the borrowers in the form of dividends on stock held by them in the associations. In this way the earnings of the system go to the borrowers \* \* \*.

See also H. Doc. No. 494, 64th Cong., 1st Sess. 9; H. Rep. No. 630, 64th Cong., 1st Sess. 10. Of course, it was recognized that if there were any defaults that the bank could not otherwise recoup, these would have to come out of the profits (53 Cong. Rec. 7539). It was assumed, however, that (53 Cong. Rec. 7869):

after the bank shall have been in operation some years a larger proportion of the earnings will probably be distributed in dividends, thereby reducing the rate of interest which the borrower may actually pay.

This theme—that earnings of the system would go to reduce interest rates—was constantly emphasized throughout the debates. See, *e.g.*, 53 Cong. Rec. 6693, 6697, 7021, 7536, 7541, 7883.

If interest rates were to be kept down by the application of profits, it was necessary to assure the Land Banks of profits; and to this end, tax immunity for the Land Banks was regarded as essential to the

accomplishment of the legislative purpose. Because "experience shows that the farmer has to pay all the taxes that are levied on the system" (53 Cong. Rec. 6697), it follows that "the only way we can guarantee that he will get the benefit of it is to exempt these instrumentalities from taxation" (*id.* at 7312). Senator Hollis made this observation (53 Cong. Rec. 7313):

In order to allow these banks to exist we must pass laws that will allow them to be profitable, so that they can exist, and in order to allow them to be profitable we exempt them from taxation.

Senator Sterling insisted that to permit taxation against the Land Banks "will injuriously affect and perhaps prevent the very purposes of the act, because a lower rate of interest under those conditions will be impossible." 53 Cong. Rec. 7317. Again and again during the congressional debates (which in the Senate were concerned largely with the constitutionality of the tax exemption), it was recognized that the tax exemption was the key to accomplishing the salutary purposes of the legislation. See, *e.g.*, 53 Cong. Rec. 6697, 6851-52, 7023-24, 7311-12, 7537-38, 7726, 7923.

Thus, it is perfectly plain that "profit-making" on the part of Federal Land Banks, and the protection of those profits by tax exemption, are integral parts of the statutory scheme by which farmers are to be assured of mortgage loans at the lowest possible interest rates. And so, even if petitioner's reservation of mineral rights was not required to recoup losses suffered on the loan to which it related (see p. 4, *supra*),

that reservation and the royalties thereby derived were directly related to petitioner's primary statutory functions. Petitioner may have suffered losses on other defaulted loans against which the earnings from the property in question would provide an offset. And if that is not the case, then those earnings will be devoted to reducing the effective interest rates of the farmers borrowing from the system. In either event, the property in question and the earnings from it are contributing directly to the achievement of the purpose for which petitioner was created: lowering the farmer-borrowers' interest rates.

In short, whether or not these activities of petitioner be labeled "governmental," they were undertaken in pursuit of the ends for which Congress established the Federal Land Bank system. Accordingly, the tax exemption that Congress regarded as an integral part of that system is applicable. The failure of the Supreme Court of Kansas to recognize these facts is strikingly similar to the error this Court pointed out only last Term in *Laurens F. S. & L. v. South Carolina Tax Comm'n*, 365 U.S. 517, 522:

[T]he necessary effect of the taxes is to increase the cost of obtaining the advances of funds from the Home Loan Bank to be used in making loans to home owners. In its impact, therefore, this tax, whether nominally imposed on the Bank or on the petitioner, is bound to increase the cost of loans to home owners and thus contravene the basic purpose of Congress . . . .

No less, to allow the State of Kansas to impose on petitioner a tax that must inevitably be passed on to

farmer-borrowers would plainly "contravene the basic purpose of Congress."

**C. EVEN IF THERE WERE A QUESTION AS TO PETITIONER'S  
AUTHORITY TO HOLD THE PROPERTY IN QUESTION,  
IT WOULD BE EXEMPT FROM TAXATION**

Although the Supreme Court of Kansas did not so decide, it suggested that there might be some question as to petitioner's authority to make the reservation of mineral rights involved in this case (R. 47-48). The court was apparently of the view that if petitioner lacked authority to retain the property in question, it could not assert the statutory immunity with respect to it. In fact, petitioner's authority to hold the property is clear; but even if that were not the case, there would be no basis for holding that the property is outside the statutory exemption.

Among the enumerated powers of the Federal Land Banks is the following (Section 13 of the Federal Farm Loan Act, 39 Stat. 372, 12 U.S.C. 781, Fourth):

To acquire and dispose of—

(a) Such property, real or personal, as may be necessary or convenient for the transaction of its business, which, however, may be in part leased to others for revenue purposes.

(b) Parcels of land acquired in satisfaction of debts or purchased at sales under judgments, decrees, or mortgages held by it. But no such bank shall hold title and possession of any real estate purchased or acquired to secure any debt due to it, for a longer period than five years, except with the special approval of the Farm Credit Administration in writing. \* \* \*

The reservation of oil and gas interests involved in this case would seem to fall under the unqualified language of subsection (a). But even if it should be thought to involve "title and possession of any real estate purchased or acquired to secure any debt due to it," so that it cannot be held for more than five years without permission, the special approval of the Farm Credit Administration in writing has been given and duly published as a Regulation of the Administration (6 C.F.R. 10.64):

*Holding mineral rights for more than 5 years.* In cases where, in connection with a sale of bank-owned real estate, the bank has retained royalty or other rights in or to minerals, and desires to hold such rights for a period in excess of 5 years, it is not considered that the bank has both "title and possession" of real estate within the meaning of section 13 Fourth (b) of the Federal Farm Loan Act (12 U.S.C. 781 Fourth (b)). However, retention of such minerals and mineral rights for periods in excess of 5 years, when in the bank's opinion it is in the bank's interest to do so, has the approval of the Administration.

This Regulation was promulgated on January 1, 1943, and still remains in effect.

While the opinion is not altogether clear, it appears that the Supreme Court of Kansas may believe that, in holding the reservation of mineral rights at issue in this case for more than five years, petitioner was acting beyond the authority granted by the Farm Credit Administration. The court's theory seems to be that the FCA meant to permit the retention of

mineral interests for more than five years only where necessary to recoup losses from loan defaults (*i.e.*, that the FCA approval was "limited to the furtherance of the governmental function for which the bank was created") (R. 48). In the first place, there is no basis in the language of the Regulation for any such qualification. Secondly, as shown above (see pp. 15-21, *supra*), the holding of property for purposes other than the recoupment of particular losses (*i.e.*, for profit) is plainly in "furtherance of the governmental function for which the bank was created." Finally, if there is any question as to whether or not petitioner has over the years been acting within the scope of the FCA approval, it is for that Administration—the agency charged by Congress with the responsibility for close and continuing supervision over the Federal Land Bank system—to determine, not for the States.

The court below also suggests (R. 47-48) that the Farm Credit Administration's blanket approval of the retention of mineral interests "when in the bank's opinion it is in the bank's interest to do so" does not comply with the congressional requirement (in Section 13, Fourth, *supra*) of "special approval" by the FCA. On the contrary, we believe that the FCA's blanket approval is entirely consistent both with the administrative scheme established by Congress and with the purposes of the Federal Farm Loan Act. It is clear that, upon consideration, the FCA concluded that the decision as to whether mineral interests should be retained upon the sale of each parcel of foreclosed land was a purely local question, depend-

ing on the value of the land and minerals in question, the fiscal condition of the bank, the rate of interest prevailing locally, etc. That conclusion on the part of the responsible agency was entirely reasonable and is certainly not open to review in the courts of the States.

Moreover, this specific problem—the extent to which, and the circumstances under which, Federal Land Banks should be permitted to retain mineral interests—has been before Congress repeatedly over the years, and Congress has declined to interfere with the way the matter is being handled by the Farm Credit Administration. As long ago as 1940, a bill (H.R. 9290, 76th Cong.) was introduced that would have limited the authority of a Federal Land Bank to reserve mineral interests upon the disposition of acquired property to situations in which a reservation was necessary to recoup the investment of the bank in the particular property. An identical bill was introduced in 1945 (H.R. 667, 79th Cong.) and another in 1947 (H.R. 583, 80th Cong.). Congress did not adopt any of these proposals.\*

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\* Other bills introduced in Congress, but not passed, would have prohibited the Federal Land Banks from reserving mineral interests under any circumstances when disposing of acquired properties (H.R. 1791 and H.R. 2358, 80th Cong.; H.R. 1264, 81st Cong.; H.R. 428, 82d Cong.; H.R. 1313, 83d Cong.); still others sought not only to prohibit Federal Land Banks from reserving mineral interests, but also to require that the mineral interests already reserved and held by such banks should be sold to the owners of the surface land (S. 2904, 82d Cong.; S. 75 and H.R. 102, 83d Cong.; S. 538, 84th Cong.). See also, *e.g.*, Hearings before Senate Appropriations Subcom-

Moreover, even if petitioner's authority to hold the property in question were doubtful, it would not follow that the property is therefore subject to taxation by the State of Kansas. The interest sought to be taxed is concededly personal property (R. 41); the tax sought to be imposed is a personal property tax (R. 48); petitioner "owns" the property (Brief for Respondents in Opposition, p. 15); and, if it be relevant, the ownership contributes toward the salutary purposes of the Federal Farm Loan Act. In view of the express congressional provision that petitioner "shall be exempt from Federal, State, municipal, and local taxation, except taxes upon real estate," these facts would seem clearly to establish entitlement to the exemption. Raising a question as to the authority of petitioner to hold the property does not derogate from the facts nor does it render the clear language of the exemption less compelling.

#### CONCLUSION

The personal property tax here sought to be imposed by a political subdivision of the State of Kansas upon the assets of a Federal Land Bank is plainly embraced by the express exemption from such taxation granted to such banks by Congress, and its imposition is therefore unconstitutional. The decision of the

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mittee on Agricultural Appropriations for 1958, 85th Cong., 1st Sess., 908-09, where the Governor of the Farm Credit Administration discussed the Land Banks' reservation of mineral interests with members of the subcommittee.

Supreme Court of Kansas sustaining the imposition  
of the tax should be reversed.

Respectfully submitted.

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AUGUST 1961.

## APPENDIX

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**Federal Farm Loan Act (39 Stat. 360, as amended) :**

**SEC. 13 [12 U.S.C. 781].** That every Federal land bank shall have power, subject to the limitations and requirements of this Act—

\* \* \* \*

**Fourth.** To acquire and dispose of—

(a) Such property, real or personal, as may be necessary or convenient for the transaction of its business, which, however, may be in part leased to others for revenue purposes.

(b) Parcels of land acquired in satisfaction of debts or purchased at sales under judgments, decrees, or mortgages held by it. But no such bank shall hold title and possession of any real estate purchased or acquired to secure any debt due to it, for a longer period than five years, except with the special approval of the Farm Credit Administration in writing. \* \* \*

\* \* \* \*

**SEC. 26 [12 U.S.C. 931-933].** That every Federal land bank and every Federal land bank association, including the capital and reserve or surplus therein and the income derived therefrom, shall be exempt from Federal, State, municipal, and local taxation, except taxes upon real estate held, purchased, or taken by said bank or association under the provisions of section eleven and section thirteen of this Act. First mortgages executed to Federal land banks, or to joint stock land banks, and farm loan bonds issued under the provisions of this Act, shall be deemed and held to be instrumentalities of the Government of the United States, and as such they and the income derived therefrom shall be exempt from Federal, State, municipal, and local taxation.

Nothing herein shall prevent the shares in any joint stock land bank from being included in the valuation of the personal property of the owner or holder of such shares, in assessing taxes imposed by authority of the State within which the bank is located; but such assessment and taxation shall be in manner and subject to the conditions and limitations contained in section fifty-two hundred and nineteen of the Revised Statutes with reference to the shares of national banking associations.

Nothing herein shall be construed to exempt the real property of Federal and joint stock land banks and Federal land bank associations from either State, county, or municipal taxes, to the same extent, according to its value, as other real property is taxed.

**Farm Credit Administration Regulations (6 C.F.R. 10.64):**

§ 10.64 *Holding mineral rights for more than 5 years.* In cases where, in connection with a sale of bank-owned real estate, the bank has retained royalty or other rights in or to minerals, and desires to hold such rights for a period in excess of 5 years, it is not considered that the bank has both "title and possession" of real estate within the meaning of section 13 Fourth (b) of the Federal Farm Loan Act (12 U.S.C. 781 Fourth (b)). However, retention of such minerals and mineral rights for periods in excess of 5 years, when in the bank's opinion it is in the bank's interest to do so, has the approval of the [Farm Credit] Administration.

**General Statutes of Kansas (1949):**

79-329. *Oil and gas property as personality.* That for the purpose of valuation and taxation, all oil and gas leases and all oil and gas wells, producing or capable of producing oil or gas in paying quantities, together with all casing, tubing or other material therein, and all other equipment and material used in operating the oil or gas wells are hereby declared to be per-

sonal property and shall be assessed and taxed as such. [L. 1917, ch. 323, § 1; March 13; R.S. 1923, § 79-329.]

79-330. *Same; valuation.* That in valuing for taxation, oil or gas properties consisting of one or more leases and oil or gas wells, there shall, in addition to the value of all oil- or gas-well material in or upon the leasehold properties, be made such valuation of the oil or gas wells as would make a reasonable and fair value of the whole property: *Provided*, That such portion of the valuation of the oil or gas wells as represents the lessor's interest, or royalty interest, therein shall be assessed to the owner thereof and the remaining portion or working interest therein shall be assessed to the owner of the lease, together with the other property assessed in connection therewith. [L. 1917, ch. 323, § 2; March 13; R.S. 1923, § 79-330.]

79-331. *Same; how value determined.* That in determining the value of oil and gas wells or properties the assessor shall take into consideration the age of the wells, the quality of oil or gas being produced therefrom, the nearness of the wells to market, the cost of operation, the character, extent and permanency of the market, the probable life of the wells, the quantity of oil or gas produced from the wells, the number of wells being operated, and such other facts as may be known by the assessor to affect the value of the property. [L. 1917, ch. 323, § 3; March 13; R.S. 1923, § 79-331.]

79-332. *Same; failure to list oil or gas property.* When any person, corporation or association owning oil and gas leases or engaged in operating for oil or gas shall refuse or neglect to make and deliver to the county assessor of every county wherein the property to be assessed is located, a full and complete statement relative to said property as required by blank forms prepared for the purpose by the commission of revenue and taxation to elicit the infor-

mation necessary to fix the valuation of the property as herein provided, such assessor shall list the property and shall from any information obtainable assess the same at its full value. [L. 1917, ch. 323, § 4; March 13; R.S. 1923, § 79-332.]

**79-333. *Same; false statements.*** That the assessor at any time shall have the right and power to examine the books and accounts of any person, company or association owning oil and gas leases or engaged in operating for oil and gas in order to verify the statement made by such person, company or association, and if from such examination or other information he finds such statement or any material part thereof willfully false he must assess the property in the same manner as if no statement had been made and delivered. [L. 1917, ch. 323, § 5; March 13; R.S. 1923, § 79-333.]

**79-334. *Same; statements to be verified: perjury.*** The statement required herein shall be made under oath and any person knowingly or willfully swearing to any false statement contained therein, shall be guilty of perjury and shall be prosecuted and punished as provided by law in other case of perjury. [L. 1917, ch. 323, § 6; March 13; R.S. 1923, § 79-334.]